IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7773 OF 2005.

MATHER & PLATT (I) LIMITED,
a company incorporated under
the Companies Act, 1956, and
having its registered office
at Chinchwad, Pune- 411 019. ... Petitioner.

V/s.

Shri Patilbuwa Kisanrao Tapkir
and 63 others. ... Respondents.

C.U.Singh, senior counsel with R.N.Salgaonkar
i/b. M/s.Salgaonkar & Co. for the petitioner.

Vivek G. Talreja for respondent No.5.

CORAM : **V.C. DAGA, J.**

RESERVED ON : **5th December 2005.**

PRONOUNCED ON : 23rd December 2005.

JUDGMENT :

. Heard learned counsel for the rival parties.

2. Rule, returnable forthwith. By consent of parties, petition is taken up for hearing.

3. This petition is directed against the common order dated 29th October, 2005 passed by the Industrial Court, Pune in Complaint (ULP) No.511/1990 to 519/1990 rejecting the applications seeking amendment to the written statement.

Factual Matrix :
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4. The factual matrix of the case reveals that the learned single Judge of this Court (B.H.Marlapalle, J.) was pleased to remand the proceedings in Writ Petition No.3079/1996 with other companion petitions vide order dated 29th July, 2005. The operative part of the order reads as under:

> "27. In the premises, these petitions succeed partly. The impugned common Judgment of the Industrial Court is hereby quashed and set aside. The Complainants are remanded to the Industrial Court for fresh decision by recording additional evidence regarding the nature of duties and the number of days of each of the complainant. Each Complainant must step in the witness box and the Management will not be precluded from leading evidence to rebut. On remand, the complaints shall be heard and decided as expeditiously as possible and in any case by 31st December, 2005. The complaints shall be treated as under Item 9 Schedule IV of the MRTU & PULP Act 1971 only and the adjudication shall confine for the relief of permanency and consequential benefits, if any. Rule made absolute in terms of the above directions but with no order as to costs. R & P; be remitted to the Industrial Court along with the writ. Writ shall go forthwith.
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> 28. The learned counsel for the Management, at this stage, submitted an oral application for stay. The application is hereby rejected by clarifying that the petitions have been disposed off by invoking powers of superintendence under Article 227 of the Constitution of India.

5. After the aforesaid remand order, petitioner herein moved an application for amendment to amend their written statement so as to incorporate para-11(A) to 11(F) forming part of the amendment application. The said amendment application came to be rejected by the Industrial Court vide impugned order dated 29th October, 2005 referred to hereinabove on following grounds:

(i) that since all the facts mentioned in the amendment application were brought to the notice of the High Court in connection with the writ petitions which were being heard finally and there was no reference of the contents of the amendment application (Exh.C-31) in the judgment of this Court as such inference was drawn that the same are not necessary for deciding the matter afresh as there was not specific direction from this Court in that behalf.

(ii) that this Court has expedited hearing of the complaints with direction to dispose it of on or before 31st December,

2005 and, therefore, by filing amendment application the petitioner is trying to frustrate the direction of this Court by delaying the matter.

(iii) that the relief of permanency can be restricted to the date of termination or the date of retirement and that the specific order permitting the amendment to the pleadings ought to have been obtained the learned single Judge of this Court who decided Writ Petition No.3079/1996 and accompanying petitions by passing remand order. Since remand order does not permit amendment to the pleadings, the Industrial Court was of the opinion that no amendment can be allowed. The aforesaid order of the Industrial Court dated 29th October, 2005 is a subject matter of challenge in the present petition filed under Article 226 and 227 of the Constitution of India.

Submissions :

6. The learned senior counsel for the petitioner while challenging the impugned order contends that it is well settled by various

decisions of this Court as also of the Supreme Court that at any time of the proceedings and, especially, before the commencement of the evidence, the parties can amend their pleadings. He further submits that the application for amendment was made before the commencement of the evidence. He submits that after 1996 there has been considerable decline in the manning requirements and there is substantial decrease in the required work force. The factory of the petitioner could not run economically and was not viable at the manning levels, which prevailed prior to 1990. Hence, in the year 1994-95, the company was constrained to declare a Voluntary Retirement Scheme (VRS), under which about 150 permanent workmen opted to retire in return for golden handshake. He further submits that the events subsequent to the filing of the complaint need to be brought on record.

7. Learned senior counsel for the petitioner relied upon various judgments of the Apex Court in the case of **The Corporation of the City of Bangalore v. B.T.Kampanna**, AIR 1976 SC 236; **Noor Mohd. Khan Chouse Khan Soudagar and another v. Fakirappa Bharmappa Machenahalli and others**, AIR

1978 SC 1217; **Smt.Jiwani v. Rajmata Basantika Devi and others**, AIR 1994 SC 1286; **Estralla Rubber v. Dass Estate (P) Ltd.**, (2001) 8 SCC 97; **Sanjay K. Sinha-II and others v. State of Bihar and others**, AIR 2004 SC 3460; **Shakuntala Bai and others v. Narayan Das and others**, AIR 2004 SC 3484.

8. Learned senior counsel for the petitioner relying upon the aforesaid judgments contends that delay by itself could not be a aground for rejection of amendment unless serious prejudice is likely to be caused to the opposite party and accrued rights are taken away as a result thereof. In absence of serious prejudice the amendment application has to be allowed. He, however, submits that the technical niceties should not come in the way of the Court, especially, at the stage when the evidence is yet to commence. He further submits that only after remand of the case by this Court; the petitioner got an opportunity to file amendment application before the Industrial Court. Hence the amendment application in question ought to have been allowed by the Industrial Court.

9. Per contra, Mr.Ganguli, learned counsel for the respondents submits that there was no necessity for the petitioner to apply for the amendment. He submits that the amendment sought to be made has no relevance to the issues involved. He further submits that looking to the judgment dated 29th July, 2005 delivered in Writ Petition No.3079/1996, the learned single Judge,in his order in general and para-27 thereof in particular, has permitted the Industrial Court to record additional evidence with respect to nature of duties and number of days for which each complainant has worked. He, thus, submits that considering the restrictive order passed by the learned single Judge, the Industrial Court was perfectly justified in rejecting the application for amendment. He, thus, submits that this Court should not interfere with the impugned order, especially, in exercise of its writ jurisdiction under Article 227 of the Constitution of India.

10. In rejoinder, learned senior counsel for the petitioner submits that para-27 of the judgment should be read as a whole. If read, it would be clear that this Court had specifically directed that adjudication should be confined to

the relief of permanency and consequential relief. He, thus, submits that in order to grant permanency to the workmen, it is necessary to find out availability of posts, workload and for that purpose the subsequent events which have taken place during the pendency of the petition will have to be taken into account. He further submits that the order of the Industrial Court, challenged in Writ Petition No.3079/1996 was in favour of the present petitioner. The present petitioner had succeeded before the Industrial Court in the earlier round of litigation. In that view of the matter, it was not necessary for the present petitioner to seek amendment to the written statement. However, since the complaints have been remanded for a trial afresh, it has become necessary to bring the subsequent on record through the amendment in question. He, thus, submits that the impugned order is liable to be quashed and set aside.

Consideration :
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11. Having heard learned counsel for the rival parties, it is no doubt true that it was expected on the part of the present petitioner to seek liberty to amend their pleadings from the learned

single Judge who has decided Writ Petition No.3079/1996 along with other petitions. However, that lapse by itself will not disentitle the petitioner to pray for amendment of the pleadings in view of the fact that Writ Petition No.3079/1996 and other petitions were filed by the workmen. The order impugned in the those petitions was in favour of the petitioner. It is also not in dispute that during pendency of the writ petitions, subsequent events have taken place and those events will have direct bearing on the issue of permanency and the consequential relief to which the respondents/ workmen may be entitled.

12. The law on amendment in pleadings as laid down by this Court from time to time is that if the amendment is required for proper and effective adjudication of dispute between the parties to avoid multiplicity of judicial proceedings, the amendment should be allowed. Merely because there was delay in making application for amendment, when no serious prejudice is shown to have been caused or likely to be caused to the opposite side, the application cannot be rejected. The delay can be compensated in terms of money. Amendment can be allowed when it does not cause

serious prejudice to the opposite party. [see **Mudra Salt & Chem v. Collector, Thane**, 2001 (3) Mh.L.J. 151]

13. In **Estralla Rubber v. Dass Estate (P) Ltd.**, the Apex Court has ruled as under:

> " It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side, normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of the plaintiff, depending on the facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side. This Court in a recent judgment in B.K. Narayana Pillai v. Parameswaran Pillai after referring to a number of decisions, in para 3 has stated, thus: (SCC p.715)
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> > "3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that

> the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

In para 4 of the same judgment this Court has quoted the following passage from the judgment in A.K.Gupta and Sons Ltd. v. Damodar Valley Corpn., AIR 1967 SC 96 : (1966) 1 SCR 796. (AIR pp.97-98, para 7)

> " The general rate, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal, (1887) 19 QBD 394: 56 IJ QDb 621. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan, AIR 1921 PC 50 and L.J.Leach and Co.Ltd. v. Jardine Skinner and Co., AIR 1957 SC 357."

This Court in the same judgment further observed that the principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement and that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event. It is further stated that the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice and that any

admission made in favour of the plaintiff conferring right on him is not withdrawn.

14. In view of the aforesaid law laid down by the Apex Court, the impugned order is set aside and the petition is allowed. Consequently, the application seeking amendment to the written statement moved before the Industrial Court also stands allowed, however, subject to payment of costs of Rs.10,000/- to the respondents since the amendment was moved at the belated stage of litigation.

15. Rule is made absolute in terms of this order.

(V.C.DAGA, J.)